THE HON'BLE SRI BILAL NAZKI, THE ACTING CHIEF JUSTICE

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION No. 13261 OF 2005

01-08-2005

Between:

P.Prasad

.....PETITIONER

AND

The Collector and District Magistrate, Kadapa District & others.

.....RESPONDENTS

THE HON'BLE SRI BILAL NAZKI, THE ACTING CHIEF JUSTICE

And

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION NO : 13261 of 2005

ORDER : (Per Hon'ble Sri Bilal Nazki, ACJ)

This writ petition has been filed by son of one Poola Narasaiah (hereinafter referred to as 'the detenu'), who is in detention by virtue of an order dated 18.12.2004 made under Section 3 of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (hereinafter referred to as 'the Act'). The grounds of detention were served on the detenu.

Counter has been filed. We have heard learned Counsel for the parties.

The grounds on which the order of detention has been challenged, are that there is no offence disclosed under Section 379 of the Indian Penal Code from the grounds of detention and it has been added to the alleged offences committed by the detenu in order to bring him within the purview of the Act. It was also argued that none of the incidents referred to in the grounds of detention, affect the public order and as such, the alleged activities of the detenu were not prejudicial to the maintenance of public order.

Counter has been filed by Sri Jayesh Ranjan, who was District Collector when the order of detention was passed, in which it is stated that the detenu has been indulging in illegal transporting and smuggling of Red Sanders and by selling the same to Chennai and some other places, which resulted in loot of National wealth.

The grounds discloses three cases, which have been registered against the detenu—one is P.O.R.No.37/2004-05, dt.23.6.2004, the second case appears to have been registered on 29.6.2004 and the third case was registered on 18.7.2004. The order of detention has been passed on 18.12.2004. The two grounds, which were pressed by the learned counsel for the petitioner during the hearing were that no offence under Section 379 of I.P.C. is disclosed. It will not be possible for us in these proceedings to say whether Section 379 of I.P.C. was attracted or not, but prima facie, once the forest produce is taken away from the forest without any authority of law, it may be an offence under the provisions of Forest Act, but equally it is an offence under Section 379 of I.P.C. Therefore, it cannot be accepted that an offence under Section 379 of I.P.C. was not disclosed by the F.I.Rs. registered in all the three cases.

The second contention, which is raised, relates to the argument of the learned counsel that by smuggling timber, there would be no danger to the public order. Section 3 of the Act empowers the Government to detain a person if it was satisfied with respect to any bootlegger, dacoit, drug-offender, goonda, immoral traffic offender or land-grabber that with a view to preventing him from acting in any way prejudicial to the maintenance of public order, it was necessary so to do, make an order directing that such person be detained. The District Magistrate, in his order of detention, recorded his satisfaction that the detenu was a Goonda within the meaning of Section 2(a) and 2(g) of the Act, which are reproduced below;

> *"**2(a)** "acting in any manner prejudicial to the maintenance of public order" means when a boot-legger, a dacoit, a goonda, an immoral traffic offender or a land-grabber is engaged or is making preparations for engaging, in any of his activities as such, which affect adversely, or are likely to affect adversely, the maintenance of public order."*

> ***2(g)** "goonda" means a person, who either by himself or as a member of or leader of a gang, habitually commits, or attempts to commit or abets the commission of offences punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code."*

The learned Counsel for petitioner submits that if Sections 2(a) and 2(g) of the Act are read together, then the detaining authority should have material before him, before passing an order of detention with respect to a person that, that person, either by himself or as a member of, or leader of a gang, habitually commits or attempts to commit or abets the commission of offences punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code. He should also be satisfied that the activities of that person affect adversely or are likely to affect adversely the maintenance of public order. Explanation has been added to Section 2(a), which reads as under;

> *"**Explanation**—For the purpose of this clause public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely inter alia, if any of the activities of any of the persons referred to in this clause directly, or indirectly, is*

causing or calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave of widespread danger to life or public health."

The learned Counsel would submit that neither there is material on record to show that the detenu was habitually committing offences punishable under relevant Chapters of the Indian Penal Code, nor there is anything on record to show that the activities alleged to have been committed by the detenu were in any manner prejudicial to the maintenance of public order. The learned Public Prosecutor relied on a judgment of a Division Bench of this Court in writ petition No.1833 of 2005, which was decided on 23.3.2005. But the learned Counsel for the petitioner submits that satisfaction has to be recorded by the detaining authority that the order was being passed with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order, and from the order of detention, this satisfaction is not recorded. Only it is stated that the detenu was a Goonda within the meaning of Section 2(a) and 2(g) of the Act and the purpose for which he was being detained is contained in Para 3 of the order of detention, which reads as under;

"Whereas the connected records pertaining to the cases detected against him shows that the provisions of A.P. Forest Law are not found sufficient in ordinary course to deal firmly with his repated illegal, clandestine and dangerous activities adversely affecting public order."

But the learned Public Prosecutor would contend that it has also been stated in para 2 that the District Magistrage has the opinion that the detenu was terrorizing local villagers through goonda elements, forcing them to commit illegal theft of Red Sanders from reserve forest and general public were terrorized to come out with complaints or evidence during investigation.

The learned counsel for petitioner relies on a judgment of Supreme Court reported in *Commissioner of Police & others Vs. C.Anita*. It was again a case of Andhra Pradesh, therefore the provisions of the same Act were being interpreted by the Supreme Court. Para 7 and Para 10 are reproduced below;

*"**7**. Sub-section (2) of Section 3 with reference to which the order of*

detention has been passed reads as follows:

"3. (2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the Government are satisfied that it is necessary so to do, they may, by order in writing, direct that during such period as may be specified in the order, such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section:

Provided that the period specified in the order made by the Government under this sub-section shall not in the first instance, exceed three months, but the Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time."

The crucial issue is whether the activities of the detenu were prejudicial to public order. While the expression "law and order" is wider in scope inasmuch as contravention of law always affects order, "public order" has a narrower ambit, and public order could be affected by only such contravention which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of "law and order" and "public order" is one of the degree and extent of the reach of the act in question on society. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum of the public, it could raise problem of law and order only. It is the length, magnitude and intensity of the terror wave unleashed by a particular eruption of disorder that helps to distinguish it as an act affecting "public order" from that concerning "law and order". The question to ask is:

"Does it lead to disturbance of the current life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed ?"

This question has to be faced in every case on its facts."

> *"**10.** "Public order", "law and order" and the "security of the State" fictionally draw three concentric circles, the largest representing law and order, the next representing public order and the smallest representing security of the State. Every infraction of law must necessarily affect order, but an act affecting law and order may not necessarily also affect the public order. Likewise, an act may affect public order, but not necessarily the security of the State. The true test is not the kind, but the potentiality of the act in question. One act may affect only individuals while the other, though of a similar kind, may have such an impact that it would disturb the even tempo of the life of the community. This does not mean that there can be no overlapping, in the sense that an act cannot fall under two concepts at the same time. An act, for instance, affecting public order may have an impact that it would affect both public order and the security of the State."*

The Supreme Court was of the view that while testing a case whether the activities of a person were affecting public order or law and order, the question invariably to be asked would be, *"Does it lead to disturbance of the current life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed ?"*. If we apply this test and go through the order of detention and grounds of detention, we find that the activities of the detenu were prejudicial to the maintenance of public order as people were afraid of even giving evidence against the detenu. These questions were also considered by a Division Bench of this Court in writ petition No.1833 of 2005, referred hereinabove.

Therefore, we do not find any merit in this writ petition, which is accordingly dismissed. No order as to costs.

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(BILAL NAZKI, ACJ)

1st August 2005.

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(G.CHANDRAIAH, J)

ajr